



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-H-H-S-, INC.

DATE: AUG. 16, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a home healthcare provider, seeks to employ the Beneficiary as an operations manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage. A motion to reopen was denied by the Director. The Petitioner filed an appeal, which we dismissed. Like the Director, we found that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. We dismissed five subsequent motions to reopen and reconsider on the same ground.

The case is now before us on the Petitioner's sixth motion to reopen and motion to reconsider. Upon review, we will deny the combined motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, a statutory or regulatory provision, or a statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In order to be eligible for the benefit sought, a petitioner must establish that it has the ability to pay the proffered wage, as stated on the labor certification, from the priority date of the petition until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). In this case, the proffered wage is \$156,520 per year, and the priority date is September 22, 2010.

A petitioner may establish its ability to pay the proffered wage if it has employed the beneficiary at a salary equal to or greater than the proffered wage. A petitioner may also establish its ability to pay the proffered wage if it has net income or net current assets in a given year that equal or exceed the proffered wage or the difference between the proffered wage and wages paid to the beneficiary, provided it can pay the proffered wages of its other employment-based immigrant petitions as well. See *Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014). If the above factors are insufficient to establish a petitioner's ability to pay the proffered wage, USCIS may consider other factors in a "totality of the circumstances" analysis. See *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

In our previous decision we noted that the Petitioner has employed the Beneficiary since before the priority date, but that the wages paid to the Beneficiary were less than the proffered wage in each of the years 2010-2016. We also found that the Petitioner did not establish its continuing ability to pay the combined proffered wages of this Beneficiary and all of its other I-140 beneficiaries based on either its net income or its net current assets in any year from the priority date of September 22, 2010, onward. A primary reason for this determination was that the list the Petitioner submitted of its other I-140 petitions provided no information about the proffered wages of these petitions or the wages paid to any of the beneficiaries. Finally, we concluded that the Petitioner did not establish its continuing ability to pay its proffered wage obligations based on the totality of its circumstances, as in *Matter of Sonegawa*, 12 I&N Dec. 612.

A. Motion to Reopen

In support of the current motion to reopen, the Petitioner submits an "Analysis of 5 Year Growth" from [REDACTED] dated April 1, 2018, which asserts that the Petitioner has grown every year from 2013 through 2017 and provides its patient and gross revenue totals as evidence thereof. The [REDACTED] analysis provides no information, however, about its source(s) and methodology. The document is not an audited financial statement, and thus is not one of the three types of evidence identified in the regulation at 8 C.F.R. § 204.5(g)(2) as required to establish a Petitioner's ability to pay the proffered wage. We also note that the gross revenue totals alleged in the analysis for the years 2013-2017 are uniformly higher than the figures for gross receipts recorded in the Petitioner's federal income tax returns (Forms 1120) for each of those years. Finally, the analysis does not address the years 2010-2012, and therefore could not establish the Petitioner's continuing ability to pay the proffered wage from the priority date on September 22, 2010, onward even if its contents were persuasive. For all of these reasons, the [REDACTED] analysis has little probative value.

The Petitioner also submits a balance sheet and income statement as of December 31, 2017. According to these documents the Petitioner's current liabilities exceeded its current assets by \$500,579 at the end of 2017, though it had net ordinary income for the year of \$294,161. Neither document bears any evidence of deriving from an audited financial statement, however, as required by 8 C.F.R. § 204.5(g)(2). Accordingly, the balance sheet and income statement lack evidentiary

weight. Furthermore, even if the net ordinary income figure of \$294,161 is derived from an audited financial statement (or the Petitioner's federal income tax return), it would not establish the Petitioner's ability to pay the proffered wage in 2017 because the Petitioner has still not submitted evidence of its total proffered wage obligation to its I-140 beneficiaries and the total wages paid to those individuals in 2017.

In our prior decisions we notified the Petitioner that USCIS records indicate the Petitioner's filing of at least 15 other I-140 petitions and clearly stated that the Petitioner must provide information on these additional beneficiaries in order to establish the Petitioner's wage burden. Despite this notification, the Petitioner neglected to provide the required information. In support of the current motion, the Petitioner submits a list of nine I-140 beneficiaries of approved I-140 petitions, their priority dates, and their current immigration status. However, the Petitioner did not provide the proffered wages for these nine beneficiaries, nor did the Petitioner provide any information on its other sponsored beneficiaries.¹ Without the information necessary to calculate the Petitioner's full wage burden, we cannot find that the Petitioner has the ability to pay proffered wages of all its I-140 beneficiaries from the priority date of the instant petition onward.

Other evidence submitted with the current motion includes copies of a credentialing application approval by [REDACTED] for the Petitioner to become a participating care provider with a Virginia health care program; a credentialing application by the Petitioner with [REDACTED] for 2015-2017, according to which the Petitioner had net revenue of \$4,485,365.25 in 2015, \$6,000,814.11 in 2016, and \$30,837,363.56 in 2017; and several participation agreements between the Petitioner and other health care providers. None of the documents, aside from the [REDACTED] provides any financial information about the Petitioner. As for the [REDACTED], the only year for which they provide new information not already in the record is 2017. The net revenue figure for that year, however, has limited usefulness without evidence of the Petitioner's total proffered wage obligation and total wages paid that year, which has not been submitted. The [REDACTED] provide no new financial information for 2015 and 2016, and none at all for the years 2010-2014. None of the foregoing materials, nor any other evidence submitted with the current motion, give us any reason to alter our previous determination that the Petitioner has not established its ability to pay the proffered wages of all of its I-140 beneficiaries based on the totality of its circumstances, as in *Matter of Sonegawa*, 12 I&N Dec. 612.

For the reasons discussed above, the new evidence submitted in support of the current motion does not establish the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

¹ According to the Petitioner, five of the I-140 beneficiaries are currently employed, and the Petitioner submits Forms W-2, Wage and Tax Statements, for five individuals who were employed during 2017 (who do not exactly coincide with the list of five current I-140 beneficiary employees). But without the proffered wages for those beneficiaries, we cannot analyze the sufficiency of the wages paid.

B. Motion to Reconsider

The Petitioner does not state any reason for reconsideration of our prior decision. The Petitioner does not allege that our previous decision was based on an incorrect application of law or policy, and has not submitted any pertinent precedent decisions, statutes, regulations, or agency policy showing an incorrect application of law or of USCIS or DHS policy. Thus, the Petitioner has presented no basis for us to reconsider our previous finding that the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward.

III. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration, or established eligibility for the immigrant benefit sought.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-H-H-S-, Inc.*, ID# 1637549 (AAO Aug. 16, 2018)